IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE FOURTEENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

-

WRIT PETITION NO : 21478 of 1994

Between:

1 Devarapalli Chittamma, W/o. Anantham,
T. Narasapuram, West Godavari District.
2 Devarapalli Venkataswamy, S/o. Anantham,
T.Narasapuram, West Godavari District.
3 Kakani Mangayya, S/o. Subbayya,
T.Narasapuram, West Godavari District.

..... PETITIONERS

AND

1 The Joint Collector, West Godavari, Eluru
2 The Revenue Divisional Officer, Eluru, West Godavari District.
3 The Mandal, Revenue Officer, T. Narasapuram, West Godavari District.
4 Chintana Krishnaiah, S/o. Sreeramulu,
T.Narasapuram, West Godavari District.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate writ, order or direction more particularly a Writ of Certiorari Calling for the records in C.No. A11/8420/1993 of the 1st respondent and to quash the same and to issue consequential directioin to restore the possession of the Land of A.C. 7.85 cents in R.S.No. 176/1, 176/2 & 178/1 of T.Narasapuram in favour of the petitioners.

Counsel for the Petitioners: MR.VENKATESWARA RAO GUDAPATI

Counsel for the respondents 1 to 3 : G.P. for Revenue(Assignments)

Counsel for the Respondent no.4: MR.B.UDAYA BHASKAR

The Court made the following :

THE HON'BLE SRI JUSTICE B.PRAKASH RAO

WRIT PETITION No. 21478 of 1994

ORDER:

Heard Sri Gudipati Venkateswara Rao, learned counsel appearing for the petitioner and the learned Government Pleader for Revenue-Assignments appearing on behalf of the respondents 1 to 3 and Sri B.Uday Bhaskar, learned counsel appearing on behalf of the fourth respondent.

The petitioners herein, who claim to be the heirs of the original assignee, filed this Writ Petition, *inter alia,* seeking for a Writ of Certiorari challenging the impugned orders dated 26.05.1994 passed by the first respondent herein allowing the revision at the instance of fourth respondent herein setting aside the orders issued by the second respondent dated 02.05.1993 on appeal in favour of the petitioners herein.

The facts leading to filing of the case are that the land in question to an extent of Ac.7.85 cents in R.S. Nos. 176/1, 176/2 and 178/1 situated in T.Narsapuram village was originally assigned to Devarapalli Venkata Swamy in the year 1932. Of the petitioners, the first petitioner claims to be the daughter-in-law, and the other petitioners claim as grand sons, of late Devarapalli Venkata Swamy. On the application filed by the petitioners herein complaining against the fourth respondent herein to the effect that the alienation made in his favour by the husband of the first petitioner and father of other petitioners and granting lease is contrary to the provisions of the A.P.

Assigned Lands (Prohibition of Transfers) Act, 1977 (for short, 'the Act 9 of 1977') and since the said alienation is in violation of the conditions contained in the original assignment, the said land is liable to be restored to them. Contesting the petitioners' claim, it was stated by the fourth respondent herein before the said primary authority viz. the third respondent herein, that initially father of the third petitioner executed an agreement on 7.1.1964 and subsequently followed by registered lease deed dated 13.09.1966 and therefore, his possession is valid. Further, the said alienation is not affected by any of the provisions of the Act 9 of 1977 since there is no restriction against the alienation. After enquiry, the third respondent herein rejected the application filed by the petitioners placing reliance on a decision of this Court in Writ Petition No. 4044 of 1977 stating that any alienation of such an assignment made in the year 1932 would not fall within the mischief of the Act 9 of 1977.

On appeal by the petitioners, the second respondent herein, on consideration of the facts and circumstances, reversed the said order and allowed the claim of the petitioners holding that the provisions of the Act 9 of 1977 have application both prospective and retrospective and therefore, the alienation made in favour of the fourth respondent is not sustainable and hence, the petitioners are entitled to restoration thereof.

On further revision, at the instance of the fourth respondent, the first respondent, after once again going into the respective contentions and placing reliance on the aforesaid decision of this Court in *B.Seetharamamma v. The Govt. of A.P. rep. by its Secretary, Revenue Department & others* held that since the assignment was that of the year 1932 in favour of the petitioners' grand father and therefore, the provisions of the Act 9 of 1977 have no application. Hence, the petitioners are not entitled to any restoration. Hence, the Writ Petition.

Sri G.Venkateswar Rao, learned counsel appearing for the

petitioners, apart from going into the merits of the claim and various other circumstances, submitted that the main ground on which both the respondents 3 and 1 sought to reject the petitioners' claim as against the violation of the condition of inalienability is basing on the decision of this Court in *B.Seetharamma's case (1 supra)* which was subsequently over-ruled by a Division Bench of this Court reported in *Vemulapalli China Kondayya & others v. District Collector, West Godavari at Eluru & others* and therefore, there can not be any justification for such alienation and the petitioners would be entitled for restoration.

Learned counsel appearing on behalf of the respondents sought to sustain the orders of the first respondent, *inter alia*, on the ground that the assignment being that of the year 1932, provisions of the Act 9 of 1977 have no application, more so, in fact, the said Act 9 of 1977 would apply only in cases of assignments made after 18.06.1954 and further, the alienation made after long lapse of period, could not possibly fall within the mischief as contemplated thereunder. Hence, there are no merits in the Writ Petition and the same is liable to be dismissed.

Considering the submissions made on either side and on perusal of the material, the main crux of the issue is as to whether the alienation as sought to be relied on by the third respondent fall well within the mischief of Section 3(1) of the A.P. Assigned Lands (Prohibition of Transfers) Act, 1977 (Act 9 of 1977) ?

There is no dispute to the fact that original assignment is in favour of the grand father of petitioners 2 and 3 and father-in-law of first petitioner dates back to the year 1932. There is also no dispute to the fact that father of petitioners 2 and 3 executed agreement on 07.01.1964 in favour of the fourth respondent and subsequently followed by registered lease deed dated 13.09.1966, in pursuance of which he claims possession and enjoyment. The petitioners are thus, admittedly dispossessed. It was the contention on the part of the

fourth respondent that it has been accepted by the primary authority and also the revisional authority to the effect that the provisions of the Act 9 of 1977 would not have application to the assignments made as long back as in the year 1932 since there is no condition of inalienability. Further, the question is squarely covered by the decision of this Court in *B.Seetharamma's case (1 supra)* which was a case of assignment made in the year 1936 and this court held that the said Act has no application. Surprisingly, neither in the counter affidavit filed by the respondents 1 to 3 and the fourth respondent separately, nor at any stage of the proceedings, the subsequent decision of this Court has been brought to the notice nor came up for consideration. In fact, the Division Bench in the aforesaid decision (2 supra), considering the scope of the provisions of the said Act and especially sections 3 & 4 thereof, held that the said provision clearly governs not only the transfers to be made after the commencement of the Act but also those made earlier thereto, and all the sub-sections (1) to (5) of Section 3 leaves, no doubt, that the Act is squarely intended to be retrospective and it applies to all transfers of assigned land before and after the commencement of the Act. While holding so, the decision of this Court reported in *B.Seetharamma's case (1 supra)* was over-ruled and therefore, the principle as laid down in the aforesaid decision in *B.Seetharamma's case (1 supra)* no longer remains in force nor can be relied on for any purpose. Having regard to the principles as laid down by the Division Bench of this Court as to the applicability of the provisions of the Act to all such transfers which also include the present one, it can not be said that the Act has no application.

Though an observation was sought to be made by the first respondent in its order to the effect that copy of the original patta granted in the year 1932 has not been filed before any of the respondents herein and further, it is not known as to whether there is any condition imposed at the time of granting patta against inalienability, however, nothing has been brought on record to show that the rules at the relevant point of time do not contemplate any

such condition. Even prior to the issuance of G.O. No. 1142, dated 18.06.1954, rules governing the issuance of patta take such condition of inalienability. There is no reference to any of such rules which were governed at the relevant point of time to show that no such provision is being made. In the absence of which, there can not be any presumption as to the absence of such condition. In the circumstances, it has to be held that the question involved is squarely covered by the principles laid down by the aforesaid Division Bench and it is to be held that the alienation as made in favour of the fourth respondent squarely fall well within the mischief of Section 3(1) of the Act and would not confer any right, title or interest of whatsoever nature in his favour and further that the petitioners are entitled to restoration of the land in question.

The Writ Petition is, accordingly, allowed and the impugned orders dated 26.05.1994 of the first respondent are set aside. No costs.

(B.Prakash Rao, J.)

14.03.2005

DRK

That Rule Nisi has been absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on Monday the Fourteenth day of March two thousand and five.

…Registrar

Copy to:

1 The Joint Collector, West Godavari, Eluru
2 The Revenue Divisional Officer, Eluru, West Godavari District.
3 The Mandal, Revenue Officer, T. Narasapuram, West Godavari District.
4 Two CCs to G.P. for Revenue (Assignments), High Court of A.P., High Court buildings, Hyderabad (o.u.t.).

5 Two CD copies.